

REMARKS

The Office Action mailed November 17, 2008 has been received and reviewed. Each of claims 1-30 stands rejected. Claims 1, 3, 9, 12, 15, 21, and 23 have been amended herein. Support for the amendments may be found in the Specification, for instance, at ¶¶ [0037]-[0039], [0042], and [0045]¹. It is respectfully submitted that no new matter has been added to the present application. Reconsideration of the above-identified application in view of the above amendments and the following remarks is respectfully requested.

Rejections based on 35 U.S.C. § 103

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in *Graham* and to provide some “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 at 1741, 82 USPQ2d at 1396 (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) with approval).” *See also* MPEP § 2142. “[R]ejections on

¹ Cites to the Specification refer to the application as published (US Pub. No.: US 2005/0154747 A1).

obviousness cannot be sustained with mere conclusory statements.” *Id.* Thus, in order to establish a *prima facie* case of obviousness the Office must provide “a clear articulation of the reason(s) why the claimed invention would have been obvious” based on factual findings made while conducting the *Graham* factual inquiries. *See* MPEP § 2143. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. *Id.*

Claims 1-8 and 12-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamanger et al. (U.S. Publication No. 2003/0046161 hereinafter the “Kamanger reference”) in view of Asayama (U.S. Publication No. 2003/0220837 hereinafter the “Asayama reference”). Additionally, claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamanger in view of Corn et al. (U.S. Publication No. 2004/0167845 hereinafter the “Corn reference”).

Independent claim 1, as amended herein, includes features similar to those previously recited in dependent claim 9, therefore, claim 1-12 will be discussed with respect to the Kamanger, Asayama, and Corn references.

Independent claim 1 recites a method for optimizing the use of paid placement space in a search results Web page. The method includes monitoring a performance of a paid listing placed for a fee in a search results Web page. The method also includes receiving conversion data associated with the paid listing, the conversion data representing sales revenue resulting from a user referral to a destination Web site associated with the paid listing. The method also includes calculating a conversion rate, where the conversion rate equals the total conversion data over a time period divided by a total number of user referrals over the time period. Additionally, the method includes receiving a revenue sharing percentage associated with the paid listing, the revenue sharing percentage is a percentage of sales revenues from a user

referral to the destination Web site that is used, in part, to determine the fee. The method also includes determining a paid yield associated with the paid listing based on the latest performance, conversion rate, and the revenue sharing percentage, wherein the paid yield represents advertising revenue resulting from all user referrals to the destination Web site over the period of time. The method additionally includes placing the paid listing in the search results Web page based on the paid yield.

The Office acknowledges that the Kamanger and Asayama references fail to teach or suggest a paid yield that is based, in part, on a calculated conversion rate. *See generally, Non-final Office Action dated 11/17/2008*, pages 19-20. The Office asserts that the Corn reference cures the acknowledged deficiencies of the Kamanger and Asayama references by stating that the Corn reference teaches, “determining a paid yield associated with a paid listing based on the latest performance and conversion data, including calculating a conversion rate...” *See Id.* (citing Corn reference ¶[0034]).

Paragraph 34 of the Corn reference is directed to “a method for partitioning search terms...” *Corn reference*, ¶[0034]. In particular, the Corn reference describes creating a number of search volume tiers. Each of the search volume tiers are then further divided into price-per-click tiers. *See Id.* The Corn reference describes an example of determining a price-per-click for a given term as being calculated from dividing the revenue generated by a term by the number of clicks to that term over a period of time. *See Corn reference*, ¶[0034]. Therefore, the Office is asserting that the partitioning of a search term into a price-per-click tier teaches or suggests calculating a paid yield that is based, in part, on performance data and conversion data.

However, it is respectfully submitted that the Corn reference fails to teach or suggest determining a paid yield associated with a listing, as recited in claim 1. Independent

claim 1, as amended, explicitly recites determining a paid yield associated with the paid listing based on the latest performance, conversion rate, and the revenue sharing percentage. Instead, the Corn reference merely provides an example for calculating a price-per-click of a given search term to aid in establishing a minimum bid for that term. *See Corn reference*, ¶[0034]. The price-per-click structure utilized in the Corn reference is recognized by the present application as being flawed. *See Specification*, ¶[0004]-[0006]. For example, the Specification of the present application states “[t]he minimum bid might not meet the needs of some advertisers whose own sales revenue streams cannot justify the cost of placing the minimum bid.” *See Specification*, ¶[0006]. As a result, the present application is directed to utilizing a paid yield to overcome the shortcomings of a pay-per-click structure. Paid yield can optimize the return on paid placement space for the search engine operator as well as the value of the paid listing for the advertiser. *See Specification*, ¶[0009].

Paid yield is based on the latest performance, conversion rate, and revenue sharing percentage for a paid listing. The Corn reference is clearly directed to determining a minimum price per click for a term, it fails to teach or suggest utilizing a paid yield to place the paid listing in search results based on the yield. Instead, the Corn reference utilizes the price-per-click tier to establish a minimum bid amount that should be paid in order to display an advertisement when a particular term is searched. *See Corn Reference*, Abstract. The determination of a minimum bid, as described in the Corn reference, is not used as a basis to place a paid listing in search results. Therefore, it is respectfully submitted that the Corn reference fails to cure the recognized deficiencies of the Kamanager and Asayama references.

Further, it is respectfully submitted that even if the Office continues to assert that the Kamanager, Asayama, and Corn reference do teach or suggest calculating a conversion rate

that is utilized in determining a paid yield, wherein the conversion rate equals the total conversion data over a time period divided by a total number of user referrals over the time period, the cited reference fail to teach or suggest determining a paid yield associated with the paid listing based on the latest performance, conversion rate, and the revenue sharing percentage, wherein the paid yield represents advertising revenue resulting from all user referrals to the destination Web site over the period of time.

The inclusion of a revenue sharing percentage, which is a percentage of sales revenues from a user referral to the destination Web site that is used, in part, to determine the fee to place the paid listing, when determining the paid yield is not taught or suggested by the cited references. Paid yield, as explicitly recited in claim 1, is therefore determined utilizing performance, conversion rate, and revenue sharing percentage information associated with a particular listing to which the paid yield is associated. Because the cited references fail to teach or suggest incorporating a revenue sharing percentage in the determination of any metric, let alone a paid yield, it is respectfully submitted that the Kamanager, Asayama, and Corn references, either alone or in combination, fail to teach or suggest claim 1 for at least these reasons.

Accordingly, it is respectfully submitted that the Kamanager reference as modified by the Asayama and Corn references do not teach or suggest all of the features of independent claim 1. Thus, Applicant respectfully submits that the Kamanager, Asayama, and Corn references, either alone or in combination, fail to teach or suggest all of the features of independent claim 1. Accordingly, Applicant respectfully requests withdrawal of the rejection of claim 1 under 35 U.S.C. § 103(a). Claim 1 is believed to be in condition for allowance and such favorable action is respectfully requested

Claims 2-11 depend directly or indirectly from independent claim 1. As such, Applicant respectfully request withdrawal of the 35 U.S.C. § 103(a) rejections of these claims as well.

Independent claim 12 recites a paid listing yield optimization system, the system includes a performance data repository containing performance data for a paid listing placed in a search results Web page, the performance data indicating how many times users visited a destination Web site by clicking on the paid listing. The system also includes a conversion data repository containing conversion data for the paid listing, the conversion data indicating how much money was generated when a user visited the destination Web site. The system additionally includes a revenue sharing percentage repository containing a revenue sharing percentage associated with the paid listing, the revenue sharing percentage indicates a percentage of the money generated by the user visiting the destination Web site that is shared with an advertiser displaying the paid listing. The system also includes a processor to calculate a paid yield associated with the paid listing based on current performance, conversion data, and revenue sharing percentage, the paid yield indicating how much money was generated when users visited the destination Web site over a period of time, and to place the paid listing on the search results Web page in exchange for a portion of the paid yield, wherein the portion of the paid yield is based, in part, on the revenue sharing percentage (emphasis added).

Independent claim12 includes features similar to those discussed herein with respect to independent claim 1, as such, said remarks are incorporated by reference with respect o claim 12. For example, claim 12 recites, “a revenue sharing percentage associated with the paid listing, the revenue sharing percentage indicates a percentage of the money generated by the user visiting the destination Web site that is shared with an advertiser displaying the paid

listing...” As discussed with respect to claim 1, the Kamanager, Asayama, and Corn references, either alone or in combination, fail to teach or suggest a revenue sharing percentage that is used to determine a paid yield. Additionally, it is respectfully submitted that the Corn reference, as relied upon by the Office, fails to teach or suggest determining a paid yield that is used to place a paid listing on a search results Web page in exchange for a portion of the paid yield.

Therefore, for at least those reasons discussed with respect to claims 1 and 12, it is respectfully submitted that the Kamanager reference as modified by the Asayama and Corn references do not teach or suggest all of the features of independent claim 12. Thus, Applicant respectfully submits that the Kamanager, Asayama, and Corn references, either alone or in combination, fail to teach or suggest all of the features of independent claim 12. Accordingly, Applicant respectfully requests withdrawal of the rejection of claim 12 under 35 U.S.C. § 103(a). Claim 12 is believed to be in condition for allowance and such favorable action is respectfully requested

Claims 13-20 depend directly or indirectly from independent claim 12. As such, Applicant respectfully request withdrawal of the 35 U.S.C. § 103(a) rejections of these claims as well.

Independent claim 21 recites computer-accessible medium having instructions for making optimal use of paid placement space on a search results user interface. The instructions include recording a number of times a user navigates from a paid listing placed in a search results user interface to a destination Web site associated with the listing. The instructions additionally include capturing a revenue amount of purchases generated at the destination Web site as a result of the user navigation. Further, the instructions include receiving a revenue sharing percentage associated with the listing. Additionally, the instructions include calculating

a paid yield of the paid listing based on the number of user navigations, the revenue amount of purchases, and the revenue sharing percentage. The instructions include placing the paid listing on the search results user interface in exchange for a share of the paid yield, in accordance with the revenue sharing percentage, wherein the placement in the search results user interface is determined, in part, by the captured revenue amount of purchases and the calculated paid yield.

Similar to features discussed herein with respect to independent claims 1 and 12, claim 21 includes similar features. Therefore, the remarks made herein with respect to claims 1 and 12 are incorporated by reference. For example, the Kamanager, Asayama, and Corn references, either alone or in combination, fail to teach or suggest receiving a revenue sharing percentage associated with the listing as recited in claim 21. In particular, the revenue sharing percentage is utilized when calculating a paid yield for a listing. The listing is then placed in the search results based, in part, on the calculated paid yield. As previously discussed, the Kamanager, Asayama, and Corn references fail to teach or suggest placing a listing based on a calculated paid yield, let alone a paid yield based, in part, on a revenue sharing percentage.

Therefore, for at least those reasons discussed with respect to claims 1, 12, and 21, it is respectfully submitted that the Kamanager reference as modified by the Asayama and Corn references do not teach or suggest all of the features of independent claim 21. Thus, Applicant respectfully submits that the Kamanager, Asayama, and Corn references, either alone or in combination, fail to teach or suggest all of the features of independent claim 21. Accordingly, Applicant respectfully requests withdrawal of the rejection of claim 21 under 35 U.S.C. § 103(a). Claim 21 is believed to be in condition for allowance and such favorable action is respectfully requested.

Claims 22-30 depend directly or indirectly from independent claim 21. As such, Applicant respectfully request withdrawal of the 35 U.S.C. § 103(a) rejections of these claims as well.

CONCLUSION

For at least the reasons stated above, claims 1-30 are now in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or cwfisher@shb.com (such communication via email is herein expressly granted) – to resolve the same. It is believed that no fee is due, however, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112 referencing Attorney Docket No. MFCP. 140316.

Respectfully submitted,

/Cory W. Fisher/

Cory W. Fisher
Reg. No. 59,366

CWF/tq
SHOOK, HARDY & BACON L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108-2613
816-474-6550